



WEB COPY

Writ Petition (MD).No.19321 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs. JUSTICE R.THARANI

Writ Petition (MD).No.19321 of 2019

and

W.M.P.(MD)No.15740 of 2019

A.Deivanayagam

... Petitioner

Vs.

The Commissioner,
Madurai City Municipal Corporation,
Madurai.

... Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned notice dated 22.08.2019 in Na.Ka.No.MSC/Package - 6/18-19/017222 issued by the respondent and quash the same.

For Petitioner : Mr.J.Bharathan

For Respondent : Mr.T.S.Mohammed Mohideen

ORDER

(Order of the Court was made by **T.S.SIVAGNANAM, J**)

Heard Mr.J.Bharathan, learned counsel appearing for the petitioner and Mr.T.S.Mohammed Mohideen, learned standing counsel appearing for the respondent Corporation.

2.With the consent on either side, the writ petition is taken up for disposal.

3.The petitioner is before this Court challenging the notice issued by the respondent dated 22.08.2019. The validity of the impugned notice is challenged on several grounds and the first and foremost ground is that the impugned notice is bereft of particulars and it does not mention the survey number, door number etc., and there is an allegation that the petitioner has encroached into a land belonging to the Madurai Corporation to an extent of 26.00 meters x 9.1 meters.

4.The petitioner's case is that the property was owned by his father, Arunachalam Pillai and to that effect, reliance has been



placed upon the sale deed executed in favour of the petitioner's father dated 17.02.1929, which is registered as document No.642 of 1929 on the file of the Joint Sub Registrar No.III, in the office of Registrar, Madurai. It is submitted that the petitioner's father was in continuous possession and enjoyment of the property and there are other records to substantiate the case of the petitioner that the property was owned by the petitioner's father and after him, the petitioner. Relying upon the extract of town survey register, it is submitted that there is sufficient record to show that the property does not belong to the respondent Corporation.

5.Further the learned counsel has drawn our attention to the photostat copies of the extract from the record of measurement in Madurai Municipality issued by the Commissioner dated 24.11.1971, wherein a sketch has been shown that and the same has been issued to the petitioner's father in Reference No.K 5 CAR 540/71.

6.Further, the learned counsel submitted that the extract of town survey register also shows that the owner of the property as the petitioner's father and the petitioner has obtained building plan approval from the respondent Corporation for the construction of building consisting of ground floor and first floor in the year 2008 and the property has been assessed to tax by the respondent Corporation and the petitioner has been remitting the property tax.

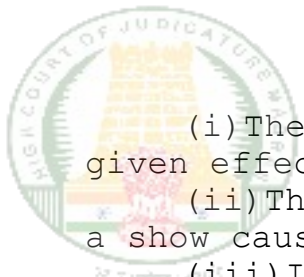
7.Mr.T.S.Mohammed Mohideen, learned standing counsel appearing for the respondent Corporation on instructions submitted that the petitioner's property is a Government property and now it is under the control of the respondent Corporation and the respondent is fully entitled to proceed further in pursuant to the impugned notice and there is no error in the notice issued by the respondent Corporation.

8.With arm of the document, the learned counsel for the petitioner would submit that the stand taken by the learned counsel for the respondent is wholly illegal and the petitioner is not an encroacher.

9.This issue being disputed question of facts needs to be considered by the authorities. The authorities could have taken note of the same even prior to the issue of notice. Further more, notice cannot be issued without full particulars as done in the petitioner's case. Since there is a proposal to form a road on the banks of River Vaigai as a part of smart city project, we are of the view that before any move is taken by the respondent Corporation, the petitioner's document should be thoroughly scrutinized. His case is to be examined individually and then only a decision has to be taken.

10.We are disposing of this writ petition by the following directions:

<https://hcservices.ecourts.gov.in/hcservices/>



(i)The impugned notice shall be kept abeyance and shall not given effect to.

(ii)The petitioner is directed to treat the impugned notice as a show cause notice.

(iii)In support of his claim, a detailed reply, enclosing copies of the documents shall be submitted within a period of thirty days from the date of receipt of copy of this order.

(iv)On receipt of reply of the same, the respondent shall enquire into the matter and the concerned Revenue Officials shall also be present in the meeting when the case is discussed in the presence of the petitioner by the respondent Commissioner and after which an informed decision shall be taken and communicate the same to the petitioner.

Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to M/s.T.S. MOHAMED MOHIDHEEN, Advocate (SR-85406[F] dated 05/09/2019)

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-85502[F] dated 06/09/2019)

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